

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BRODSKY et al.,

Plaintiff,

v.

BMW OF MANHATTAN et al.,

Defendant.

Civ. No. 18-13885 (KM) (JBC)

ORDER

The defendants BMW of Manhattan and BMW of North America ("BMW NA") having filed a motion (DE 10) to dismiss the complaint; and the Court having converted that motion to a motion for summary judgment pursuant to Fed. R. Civ. P. 12(d); and the *pro se* plaintiffs Jay Brodsky and Donna Martin having filed a response (DE 16); and the defendants having filed a reply (DE 17);

And defendant BMW of Manhattan having filed a motion (DE 13) to set aside default; and the plaintiffs having filed an opposition (DE 19);

And plaintiffs having filed a motion (DE 20) for leave to file a supplemental complaint pursuant to Fed. R. Civ. P. 15(d); and defendants having filed a response (DE 22);

And the court having considered the matter without oral argument; for the reasons stated in the accompanying Opinion, and good cause appearing therefor;

IT IS this 15th day of August, 2019,

ORDERED that the motion (DE 10) of defendants BMW of Manhattan and BMW NA to dismiss the complaint, converted to a motion for summary judgment under Rule 12(d), is **GRANTED**. This **dismissal is without prejudice** to the filing, **within 30 days**, of a properly supported motion to amend the complaint. The Court will expect compliance with Fed. R. Civ. Pro. 15 and Loc. Civ. R. 15.1. Any such motion shall be accompanied by a new and more detailed *in forma pauperis* application from Mr. Brodsky, stating all sources of income and documenting them with appropriate financial records.

IT IS FURTHER ORDERED that the motion (DE 13) of defendant BMW of Manhattan to vacate entry of default is **terminated as moot**, because a request for default has not been filed and default has not been entered.

IT IS FURTHER ORDERED that the motion (DE 20) of plaintiffs to supplement the complaint, pursuant to Fed. R. Civ. P. 15(d), is DENIED.

A handwritten signature in black ink, reading "Kevin McNulty", written over a horizontal line.

KEVIN MCNULTY
United States District Judge